

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

E.ON AG and
E.ON ZWÖLFTE VERWALTUNGS GmbH,

Plaintiffs,

v.

ACCIONA, S.A. and FINANZAS DOS, S.A.,

Defendants.

No. 06 Civ. 8720 (DLC)

DECLARATION OF PEDRO PÉREZ-LLORCA ZAMORA

Pursuant to 28 U.S.C. § 1746, I, Pedro Pérez-Llorca Zamora, hereby declare as follows:

1. I am a member of the law firm Pérez-Llorca and serve as Spanish counsel to E.ON A.G. and E.ON Zwölfte Verwaltungs GmbH. For the purposes of this Declaration, I will refer to E.ON AG and E.ON Zwölfte Verwaltungs GmbH collectively as “E.ON”. I submit this declaration in connection with E.ON’s Motion for a Preliminary Injunction.

The Gas Natural Bid

2. On September 5, 2005, Gas Natural SDG, S.A. (“Gas Natural”), Spain’s largest gas distributor, announced its intention to commence a tender offer for Endesa, S.A. (“Endesa”), a Spanish utility.

3. The Gas Natural bid was supported by Gas Natural’s controlling shareholders Caja de Ahorros y Pensiones de Barcelona (known as “La Caixa”) and Repsol YPF, S.A. (“Repsol”). La Caixa is a Spanish savings bank, which owns approximately 33.1% of Gas

Natural's ordinary shares. Repsol, in which La Caixa also owns a substantial stake, exercises control over an additional 30.8% of Gas Natural's ordinary shares. Repsol and La Caixa have entered into a shareholders agreement in respect of Gas Natural. In addition, the Chairman of Gas Natural is the vice chairman of La Caixa. A true and complete copy of excerpts of Gas Natural's Form F-4 Registration Statement, filed with the United States Securities and Exchange Commission on July 24, 2006 is annexed hereto as Exhibit A. A true and complete copy of excerpts of Gas Natural's 2005 Annual Report are annexed hereto as Exhibit B.

4. On January 5, 2006, Spanish antitrust regulators recommended to the Spanish Government that the proposed acquisition of Endesa by Gas Natural be prohibited. A true and complete copy of excerpts of the recommendation of the *Tribunal De Defensa De La Competencia*, dated January 5, 2006, along with a certified English translation, is annexed hereto as Exhibit C. A certified English translation of the complete document will be provided upon request.

5. However, the Spanish Cabinet declined to follow that recommendation and approved Gas Natural's €23.2 billion bid, which would combine Spain's biggest gas importer with its biggest electricity producer and distributor. A true and complete copy of excerpts of the *Acuerdo de Consejo de Ministros*, dated February 3, 2006, along with a certified English translation, is annexed hereto as Exhibit D. A certified English translation of the complete document will be provided upon request.

6. Endesa resisted Gas Natural's bid in the Spanish courts. By resolution dated March 21, 2006, a Commercial Court in Madrid enjoined the Gas Natural bid pending the outcome of a lawsuit Endesa brought alleging violations of European antitrust law. The Court based its decision on the existence of an agreement between Gas Natural and Iberdrola, S.A.

("Iberdrola"), Endesa's main Spanish competitor, pursuant to which Gas Natural had promised to sell to Iberdrola a substantial part of Endesa's business if Gas Natural's bid was successful. A true and complete copy of excerpts of the Madrid Commercial Court's decision, dated March 21, 2006, along with a certified English translation, is annexed hereto as Exhibit E. A certified English translation of the complete document will be provided upon request.

7. In addition, Endesa appealed to the Spanish Supreme Court the Spanish Cabinet's approval of the Gas Natural bid. By resolution dated April 28, 2006, the Spanish Supreme Court temporarily suspended that approval (which directly entails the suspension of Gas Natural's bid) until it could rule on the merits of Endesa's claim. A true and complete copy of excerpts of the Spanish Supreme Court's decision, dated April 28, 2006, along with a certified English translation, is annexed hereto as Exhibit F. A certified English translation of the complete document will be provided upon request.

The E.ON Bid

8. On February 21, 2006, E.ON announced a €27.5 per share offer for Endesa, which was worth a total of €29.1 billion, nearly €6 billion more than the Gas Natural bid. Moreover, unlike the Gas Natural bid, E.ON's bid was all cash.

9. On February 24, 2006—just three days after E.ON announced its bid—the Spanish Government passed legislation (Royal Decree-Law 4/2006) requiring companies to gain the authorization of the Spanish National Energy Commission (known by its Spanish initials as the "CNE") for the acquisition of over 10%, or any other percentage resulting in significant influence, of a Spanish energy company's share capital. The press quoted Spanish Government representatives as stating that this legislation was prompted by the E.ON bid for Endesa. A true and complete copy of Spain Takes Measures to Fend Off E.ON Bid, Associated Press

Newswires, Feb. 24, 2006, is annexed hereto as Exhibit G. A true and complete copy of Stephen Castle and Michael Harrison, Brussels in the Hot Seat as EU Goes to War Over Energy, The Independent, Feb. 28, 2006, at 65, is annexed hereto as Exhibit H.

10. On July 27, 2006, the CNE "approved" E.ON's bid, but subjected it to a series of very onerous conditions. The CNE required, among other things: (1) that E.ON would not reorganize Endesa for a period of ten years; (2) that E.ON divest several specified power stations and other key assets; (3) that stringent limits be placed on E.ON's ability to receive dividends from its Endesa holdings; (4) that E.ON inform the CNE each year regarding future investment plans in gas and electricity regulated activities and in gas and electricity strategic assets; and (5) during the ten years from E.ON's effective acquisition of control over Endesa, if any company indicated an intent to acquire effective control of E.ON, that E.ON communicate such circumstance to the CNE, which may revise its conditions on the E.ON-Endesa relationship. Breach of any of the foregoing conditions and obligations could give rise to revocation of the CNE's authorization for E.ON to proceed with its offer and could result in the suspension of E.ON's right to vote its Endesa shares as well as the forced divestiture of Endesa shares acquired by E.ON. A true and complete copy of a certified English translation of the CNE's conditions for approval of E.ON's bid is annexed hereto as Exhibit I.

11. Both E.ON and Endesa appealed the CNE's ruling to the Spanish Ministry of Industry, arguing that the conditions violated Spanish law. Such an appeal is a prerequisite under Spanish law to challenge the ruling in the Spanish courts.

12. In addition, the European Commission separately investigated the CNE's action to determine whether it violated European law. In August 2006, the European Commission delivered to Spain a pre-warning letter in which the European Commission

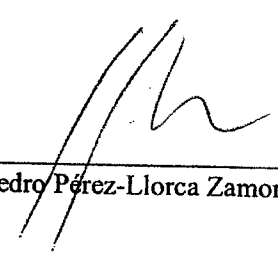
indicated that many or all of the CNE's conditions may conflict with European law. A true and complete copy of the European Commission's press release "Mergers: European Commission has sent preliminary assessment to Spain of measures imposed by CNE on E.ON", dated August 25, 2006, is annexed hereto as Exhibit J.

13. On September 26, 2006, the European Commission struck down the CNE's conditions. The European Commission held that the CNE's conditions violated the European Commission Treaty's rules on free movement of capital (Article 56) and freedom of establishment (Article 43) and were not justified by a legitimate interest, such as the security of Spain's supply of energy. In addition, the European Commission held that the CNE's conditions were unlawful because they were adopted and entered into force without prior communication to and approval by the European Commission, in violation of Article 21 of the European Merger Regulation. A true and complete copy of the European Commission's press release announcing its decision, dated September 26, 2006, is annexed hereto as Exhibit K.

14. The Spanish Government has yet to give the European Commission's ruling full force and effect, stating that it needs to determine how the ruling should be implemented. As a result, the press is reporting that Spain is now being threatened with legal action by the European Union if the CNE does not comply with the ruling. A true and complete copy of The Spanish Securities Exchange Commission is Reluctant to Grant Unconditional Approval of the Public Offer of E.ON and the Spanish National Energy Commission Ratifies Its Decision, El Mundo, Oct. 4, 2006, is annexed hereto as Exhibit L. A true and complete copy of Javier González Navarro, The CNE Will Clear Out the Path to Acciona to Arrive at the 24.9% of the Capital of Endesa, ABC, Oct. 5, 2006, and M. Núñez, The Government Turns a "Deaf Ear" to the Request by Brussels, ABC, Oct. 5, 2006, is annexed hereto as Exhibit M.

I declare under the penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed on October 13, 2006.



Pedro Pérez-Llorca Zamora